REMARKS

I. Introduction

In response to the Office Action dated October 19, 2004, Applicants have amended claims 1-11 and 13-14 so as to address the pending claim objection and to further clarify the claimed subject matter. New claims 15-18 are also added. Support for these amendments can be found, for example, in Figs. 1 and 6, and their corresponding sections of the specification. No new matter has been added.

For the reasons set forth below, Applicants respectfully submit that all pending claims are patentable over the cited prior art references.

II. Claim Objection

Claims 3, 4, 5, 10, 13 and 14 are objected to under 37 C.F.R. 1.75(c) as being in improper form because each claim depends on multiple independent/dependent claims. By the present Amendment, the claim dependency of the objected claims has been corrected. Applicants, therefore, solicit withdrawal of the objection to the claims in view of the foregoing amendments.

III. The Rejection Of Claims 1 and 7 Under 35 U.S.C. § 102

Claims 1 and 7 are rejected under 35 U.S.C. § 102(a) as being anticipated by USP No. JP No. 2001257532 to Takumi. Applicants respectfully traverse this rejection for at least the following reasons.

Claims 1 and 7, as amended, recite a semiconductor device and a method for fabricating a semiconductor device, wherein a lower surface of the capacitive insulating film is in contact with the first insulating film.

However, Takumi discloses that the lower surface of the capacitive insulating film 9 is in contact only with the lower electrode 7, or with the lower electrode 7 and the capacitive insulating film 9. Importantly, the lower surface of the capacitive insulating film 9 is NOT in contact with the interlayer film 15. In direct contrast, in accordance with one exemplary embodiment of the present invention, the lower surface of the capacitive insulating film 113 formed on the capacitive lower electrode 111 is in contact with the first insulating film 112 covering the sides of the capacitive lower electrode 111.

Thus, at a minimum, Takumi does not disclose or suggest a semiconductor device or a method for fabricating a semiconductor device, wherein a lower surface of the capacitive insulating film is in contact with the first insulating film, as recited by amended claims 1 and 7.

Accordingly, as anticipation under 35 U.S.C. § 102 requires that each element of the claim in issue be found, either expressly described or under principles of inherency, in a single prior art reference, *Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983)*, and at a minimum, Takumi fails to disclose or suggest the foregoing claim elements, it is clear that Takumi does not anticipate claim 1 or 7, or any of the claims dependent thereon.

IV. The Rejection Of Claims 2, 6, 8, 9, 11 and 12 Under 35 U.S.C. § 103

Claims 2, 6, 8, 9, 11 and 12 are rejected under 35 U.S.C. § 103 as being unpatentable over Takumi. Applicants respectfully request reconsideration of this rejection for at least the following reasons.

Claims 2 and 11 recite a semiconductor device and a method for fabricating a semiconductor device, wherein a third insulating film is formed to cover the second insulating film, and wherein a lower surface of the capacitive insulating film is in contact with the first

insulating film.

In the pending Office Action, the Examiner admits that Takumi does not disclose or suggest a third insulating film, but alleges that the third insulating film is merely a duplicate of the second insulating film such that mere duplication of the essential working part of a device without changing its functions and manners involves only routine skill in the art.

However, Applicants respectfully submit that the second insulating film and the third insulating film are separate and distinct from each other, as disclosed in Figs. 8A to 8C and at page 28 line 23 to page 31, line 7 of the specification. Thus, the Examiner's conclusion that the third insulating film is a mere duplication of the second insulating film is improper.

Even assuming *arguendo* that the Examiner's conclusion is proper, Takumi is silent with regard to providing an insulating film having two insulating layers, let alone providing two identical insulating layers in the manner asserted by the Examiner. As such, the Examiner's conclusion of obviousness is without any evidentiary foundation and is not supported by the disclosure of Takumi.

Furthermore, for at least the reasons discussed above with respect to claims 1 and 7, Takumi merely discloses that the lower surface of the capacitive insulating film 9 is in contact with the lower electrode 7, or with the lower electrode 7 and the first hydrogen barrier film 8. As such, Takumi does not disclose or suggest that the lower surface of the capacitive insulating film 9 is in contact with the interlayer film 15. Thus, Takumi does not disclose or suggest the claim elements recited by claims 2 and 11.

Accordingly, as each and every limitation must be either disclosed or suggested by the cited prior art in order to establish a *prima facie* case of obviousness (see, **M.P.E.P. § 2143.03**),

and Takumi fails to do so, it is respectfully submitted that claims 2 and 11 are patentable over the cited prior art.

V. All Dependent Claims Are Allowable Because The Independent Claims From Which They Depend Are Allowable

Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplimatic Engineering Co., 819 F.2d at 1100, 1108 (Fed. Cir. 1987).* Accordingly, as independent claims 1, 2, 7 and 11 are patentable for the reasons set forth above, it is respectfully submitted that all claims dependent thereon are also in condition for allowance.

For all of the foregoing reasons, it is submitted that dependent claims 3-6, 8-10 and 12-14 are patentable over the cited prior art. Accordingly, it is respectfully submitted that the rejections of claims 3, 5, 10, 13 and 13 under 35 U.S.C. § 112, claims 1 and 7 under 35 U.S.C. § 102 and claims 2, 6, 8, 9, 11 and 12 under 35 U.S.C. § 103 have been overcome.

Further, it does not appear that any of the cited references discloses or suggests the claim elements recited by new claims 15-18. Thus, it is respectfully submitted that new claims 15-18 are patentably distinct over the cited prior art.

VI. Conclusion

Accordingly, it is urged that the application is in condition for allowance, an indication of which is respectfully solicited.

If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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